

**United States District Court**  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

EDDY JAMES HOWARD,  
ID No. 01859038

v.

DIRECTOR, TDCJ-CID

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CIVIL ACTION NO. 3:21-CV-2311-S-BK

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND  
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case (“FCR”) [ECF No. 7]. Petitioner filed a Notice of Right to Appeal/Amend [ECF No. 8]. Liberally construed, Petitioner objects to the FCR and seeks leave to amend his original petition for writ of mandamus to include a Memorandum of Law that he submitted in support of his petition for writ of habeas corpus in state court.

Petitioner’s request to amend his petition for writ of mandamus to include the Memorandum of Law filed in his state habeas case **GRANTED**.

The District Court reviewed *de novo* those portions of the FCR to which objections were made and reviewed the remaining portions of the FCR for plain error. Finding no error, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

Petitioner filed a petition for writ of mandamus to compel the state court to respond to his state writs and requests. As set forth in the FCR, federal courts lack the power to issue writs of mandamus against state officers in the performance of their duties. As such, Petitioner’s claims lack an arguable legal basis, and will be **DISMISSED WITH PREJUDICE** as frivolous and for failure to state a claim.

The Court prospectively **CERTIFIES** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a)(3). In support of this certification, the Court adopts and incorporates by reference the FCR. *See Baugh v. Taylor*, 117 F.3d 197, 202 and n.21 (5th Cir. 1997). Based on the FCR, the Court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (per curiam).<sup>1</sup> In the event of an appeal, Petitioner may challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit. *See Baugh*, 117 F.3d at 202; FED. R. APP. P. 24(a)(5).

**SO ORDERED.**

SIGNED November 30, 2021.

  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order. A timely notice of appeal must be filed even if the district court certifies an appeal as not taken in good faith.